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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,246	12/20/2001	Jeffrey E. Fish	KCX-400 (15421)	9059

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DORITY & MANNING, P.A.
POST OFFICE BOX 1449
GREENVILLE, SC 29602-1449

EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,246

Applicant(s)

FISH ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 25, 2005 has been entered.

Response to Amendment

2. The Amendment submitted on April 25, 2005, has been entered. Claims 9 and 26 have been cancelled. Claims 1, 16, and 23 have been amended. Therefore, the pending claims are 1 – 8, 10 – 25, and 27 – 30.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1 – 8, 10 – 25, and 27 – 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. (4,892,535) in view of Tanzer et al. (5,411,497).

The features of Bjornberg et al. and Tanzer et al. have been set forth in the previous Office Action. The claims have been amended to include the limitation that the layers are textured by using heat and pressure to form elevations and depressions. As set forth previously, Bjornberg et al. discloses that a first layer is thermoformed to produce pockets and then bonded, using heat and pressure, to a base layer (column 2, lines 62 – 68). This process would inherently produce elevations and depressions in the first layer and the base layer since the bonded regions

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would be compressed to some degree and the base layer would bulge out some degree after the bonding process due to the formation of the pocket regions. Thus, the rejection is maintained.

5. Claims 1 – 8, 10 – 25, and 27 – 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al.

The features of Baer et al. have been set forth in the previous Office Action. The claims have been amended to recite that the layers are textured with elevations and depressions which are formed using heat and pressure. Baer et al. discloses that the bonding lines are formed by passing the layers through heated rolls with an engraved pattern (column 2, lines 16 – 20). Hence, Baer et al. uses heat and pressure from the rollers to form the elevations and depressions of the pocket regions, since the bond lines would be compressed and the pockets would bulge out, as shown in the figures. Thus, the rejections are maintained.

Response to Arguments

6. Applicant's arguments filed April 25, 2005 have been fully considered but they are not persuasive. The applicant argues that the back sheet of Bjornberg et al. remains substantially flat (response, pages 7 – 9). The applicant bases this on the lack of disclosure in Bjornberg et al. describing the backsheet as being three dimensional and the picture showing a mostly flat backsheet.

First, the drawings, while supplied to represent the actual product, are not considered to be exact replicas of the finished product and therefore, cannot be used to determine with certainty whether the back sheet would be completely flat or have some degree of texturizing.

Second, as set forth in the previous Office Action, the product disclosed by Bjornberg et al. is produced by the exact same method as the applicant uses to produce the claimed product.

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As shown in the applicant's own pictures describing the method, the layers are bonded together by running the composite through two rollers where one roller is engraved with a bonding pattern. The base layer of the composite is mostly flat prior to passing through the rollers. Thus, the texturing in both layers is a result of the forces applied to the fabrics during the bonding process, as well as the pressure of the material in the pockets, pushing on the outer layers. And, if nothing else the bonded regions formed by the engraved roller would be compressed to some degree, in both outer layers as compared to the unbonded regions of the outer layers, creating depressions on both layers. Hence, the Bjornberg et al. fabric would inherently have some degree of texturing, forming elevations and depressions, in both outer layers as a result of bonding the layers together.

Finally, the applicant argues that the base layer would remain *substantially flat*. The claim does not require a specific amount of height difference between the recesses and elevations to produce a textured product. Therefore, any degree of texture, such as slightly compressed regions or embossed regions, would read on the present limitation. Hence, a product which is *substantially flat* is also slightly textured. This minor amount of texturing meets the texturing limitations as currently claimed. Thus, the rejections are maintained.

7. The applicant also argues that Baer et al. fails to teach the claimed invention because Baer et al. doesn't explicitly teach the claimed length to width ratio of the pocket regions (response, pages 9 and 10). As set forth previously, Baer et al. does disclose that the dimensions of the pockets can be various sizes and shapes and shows different shaped and sized pocket regions in the figures. Thus, it would be obvious to one of ordinary skill to change the size and shape of the pockets as taught by Baer et al.

The applicant argues that a ratio between 4 and 100 is unobvious because this property facilitates delamination of the pockets upon application of force. However, this property is not claimed by the applicant and therefore, is not given patentable weight at this time. Further, even if the property were claimed, the property is the result of using certain pocket sizes and would be inherent to any material with the claimed pocket size. Thus, only the structure, i.e., the pocket size, resulting in the property, i.e., easier delamination of the pocket regions, needs to be taught by the prior art. The prior art does not need to produce the pocket size for the same reason or acknowledge that the property is found in pocket regions of the claimed size. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Hence, the prior art need only teach or suggest changing the pocket size for any reason, and does not need to teach that changing the pocket size facilitates delamination. Further, it is noted that the applicant has provided no evidence to show that the claimed length to width ratio produces unexpected properties with regards to the delamination properties of the pockets. The arguments of counsel cannot take the place of evidence. *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). Thus, the improved property is not sufficient to distinguish over the prior art.

Also the applicant argues that the prior art fails to teach that the inner regions are capable of delaminating upon application of a force, while the perimeter region withstands the force (response, page 10 – 11). The applicant's response summarizes the teaching of Baer et al. with regards to delamination, including the statement that in some cases, the pressure caused by the

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swelling of the SAP particles can rupture the bond lines in the pockets thereby increasing the available volume and flow into the adjacent, less saturated pockets (response, page 10). This statement explicitly teaches that the bond lines *around* the pockets will rupture (or delaminate) due to the swelling of SAP particles (which is an application of a force to the composite) while the remaining pockets and outer regions will stayed sealed. Thus, the teaching of Baer et al. does teach the claimed limitation. Therefore, the rejections are maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jenna-Leigh Befumo
August 12, 2005